



CITY OF KIRKLAND

Department of Public Works

123 Fifth Avenue, Kirkland, WA 98033 425.587.3800

www.ci.kirkland.wa.us

MEMORANDUM

To: Dave Ramsay, City Manager

From: Jenny Gaus, Environmental Services Supervisor
Rob Jammerman, Development Engineering Manager
Daryl Grigsby, Public Works Director

Date: July 9, 2009

Subject: Response Letter to Bruce White and Teresa Chilelli-White

RECOMMENDATION:

It is recommended that the Council authorize the Mayor to sign the attached response letter to Mr. White and Ms. Chilelli-White.

POLICY IMPLICATIONS:

The letter of inquiry is from residents in the Potential Annexation Area (PAA) and concerns a stormwater system that was recently constructed beneath a new public street in the PAA as part of a plat that was reviewed and approved by King County. The letter advises the property owners that the City will assume maintenance of systems in the PAA that are currently maintained by King County.

BACKGROUND DISCUSSION:

Mr. White and Ms. Chilelli-White live downhill (west) of the new plat of Chatham Ridge, which is located near the intersection of NE 117th Street and 82nd Ave NE in the PAA. They are concerned about the potential for flooding should the system in Chatham Ridge overflow. The system will be publicly maintained. It is currently under King County maintenance responsibility. If Kirkland annexes this area, the facility would be maintained by the City. King County DDES has indicated that the system as designed meets or exceeds the requirements of the 2005 King County Surface Water Design Manual. To date no flooding has occurred. In light of the fact that the City does not have jurisdiction over the PAA at this time, Mr. White and Ms. Chilelli were referred back to King County. Public Works will keep the correspondence for reference should annexation proceed.

Attachment A: Letter and attachments from Bruce White and Teresa Chilelli-White

Attachment B: Response letter from Mayor Lauinger to Bruce White and Teresa Chilelli-White

Mayor & City Council
City of Kirkland
123 5th Ave
Kirkland, WA 98033

May 7, 2009

RE: Annexation of the Finn Hill Juanita Area

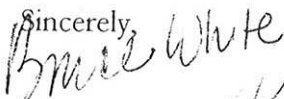
Dear Mayor and Council Members:

We reside in the future annexation area at the address listed below. Currently there is a development in the final plat process just East of us know as Chatam ridge. The storm drainage system for Chatam ridge will become a public system maintained by King County Public Works Department.

We are uncertain, but believe that should our area be annexed to the City of Kirkland, this storm system shall become the responsibility of the City of Kirkland Public Works Department. If this is the case, we feel it only fair that you should be aware of the potential danger should this system fail, even though the likelihood of failure is minimal.

Currently the system has two overflow protections, however, should these both fail and/or the system or the catch basins not be properly maintained, the storm water shall head directly west to our property and our home. This is in violation of core requirement #1 of the King County drainage code requiring the water to flow in the direction prior to the development which was southwest. King County has never explained how allowing this system does not violate core requirement #1.

We have attached the last letter sent to King County and their response. Consider this letter notice that, upon annexation and if the City of Kirkland assumes the Chatam ridge storm system, the City of Kirkland shall also assume any responsibility for damages caused by system or maintenance failure.

Sincerely,


Bruce White
Teresa Chilelli White
11724 80th Ave NE
Kirkland, WA 98034
425-501-4693
Tchilelli@aol.com

cc. City Manager and Annexation team

Attachments: 3/4/09 Letter to King county Council with attachments
3/30/09 response from King County

CITY OF KIRKLAND
CITY MANAGER'S OFFICE

MAY 08 2009

RECEIVED



Law Offices
Of
Karen A. Willie, *PLLC*

KAREN A. WILLIE

March 4, 2009

Councilmembers
Metropolitan King County Council
516 Third Avenue, Room 1200
Seattle, Washington 98104

Ray Florent
Blackriver Corporate Park
900 Oakesdale Ave SW Ste 100
Renton, WA 98057-5212

Re: **Final Plat Approval Chatham Ridge Development, Kirkland, WA**
DDES File No. L08FR036
Ordinance 15716

Dear Councilmembers and Mr. Florent,

Teresa Chilleli-White and her husband, Bruce White (the Whites) have retained my firm in connection with the above-referenced Burnstead Construction development. During the course of our representation, we have sent several letters to DDES outlining our clients' concerns regarding the failure of Burnstead to comply with condition 6a of the preliminary plat approval. For your convenience, we have included these letters, and the responses from the County, as Exhibits 1 through 4. We understand the position of DDES, but wanted to write a final letter outlining our clients' position and to let you know that the drainage system for Chatham Ridge has already experienced some failure.

In its most recent response of February 11, 2009, DDES explains that it believes Burnstead has met condition 6a, and that it will not require any modifications to the drainage system by Burnstead. However, as outlined below, Burnstead has not complied with condition 6a of preliminary approval. Therefore, pursuant to KCC 19A.16.030.B and 19A.16.040.T, the

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Seattle, WA 98119
Phone: 206-223-1060
Facsimile: 206-223-0168
Email: kwillie@willielaw.com*

Council should not grant final plat approval until this condition is satisfied. Under RCW 56.17.140: "Final plats and short plats shall be approved, disapproved, or returned to the applicant." In this case, the Whites ask the Council to return the final plat application to Burnstead for compliance with condition 6a of preliminary approval.

Condition 6a was added to the preliminary approval for the project after the Whites' appealed the hearing examiner's initial approval to the Council.¹ Condition 6a states:

The facility design and provisions for overflow requirements listed in the 2005 KCSWDM shall be met and the concerns of the appellant shall be addressed during the engineering plan review. The KCSWDM manual offers a variety of options for this, which will be considered during the detailed Engineering Review phase. For this DDES has no objection's [sic] to the applicant's offer to include the appellants in discussion of design options at the final engineering review phase. We recommend that this coordination be made between the appellant and applicant. Specifically, the applicant shall meet the requirements in Section 1.2.3 Core Requirement # 3: Flow Control.

In its most recent response, DDES states, "DDES has fully complied with Condition 6a and with the King County Surface Water Design Manual (KCSWDM)." While we understand that DDES believes it has complied with condition 6A, it has not. The condition clearly states, "the concerns of the appellant shall be addressed during the engineering plan review." This has not occurred. The Whites' concern throughout the planning, permitting, and appeal processes has specifically been with water flow in the event of system failure. Water flow during a system failure, according to the Chatham Ridge drainage report and the Whites' expert, will flow directly west onto the White property. This is in direct violation of core requirement # 1 of the KCSWDM, which requires that the water be directed to the natural drainage path to the southwest. DDES has not explained how, in the event of a failure, re-directing water flow from the previous natural path, is not a violation of the first and foremost core requirement. Plainly put, the Whites remain concerned about the safety of their residence should the drainage system fail.

As the photos attached as Exhibit 5 and the map at Exhibit 6 illustrate, there has already been a vault failure at the SW corner of the vault, causing sheet flow onto the White property. Prior to the Chatham Ridge Development, flows went into a drainage swale. The photos also show the silt and gravel deposited on the White property by the water flows. Should the system fail on a larger scale, the resulting damage to the White property will be increased. DDES has taken the position that if the Whites are concerned about flooding, they have "the option of adding additional protections to satisfy her own concerns at her own expense." This is a misstatement of the law and of the policies in the KCSWDM meant to protect property from the injuries effects of stormwater flows from new development. In *Sigurdson v. City of Seattle*, 48 Wn.2d 155, 163, 292 P.2d 214 (1956), the court explained that a homeowner does not have a duty to "guard against and fend off" waters that have been artificially collected and discharged.

¹ A more detailed history of this matter is outlined in our August 22, 2008, letter located at Exhibit 1.

In this matter, a failure of the vault system will create a discharge of collected and concentrated surface water. It is unreasonable and against public policy to require an adjoining property owner to bear the burden and expense of protecting against surface waters improperly discharged from a failed drainage system. Moreover, the Whites have installed French drains to address the water flows entering their property prior to the development of Chatham Ridge, and it is not equitable to expect her to upgrade this system to handle increased flows created by the development.

In Summary, the Whites urge the Council to return the final plat to the applicant for compliance with condition 6a of the preliminary plat approval. The secondary overflow system does not address the concerns regarding system failure and does not address the concern of the catchbasins overflowing due to lack of maintenance. As we have reiterated in our previous letters, the failure of the County to enforce condition 6a of the approval is especially concerning given that the County is set to assume maintenance responsibilities for the drainage system. Once the County assumes maintenance responsibilities for the system, the County also assumes liability for all damages arising out of the failure to maintain the system properly. *See e.g., Colella v. King County*, 72 Wn.2d 386, 391, 433 P.2d 154 (1967). In this case, a likely cause of the drainage system failure will be a failure to maintain the catchbasins. As a means to address their concerns regarding maintenance, in the last letter the Whites asked DDES to require Burnstead to enter into a maintenance contract with a third party to ensure the catchbasins are regularly maintained. The County could also enter into such a contract. The County misinterpreted this request as a request to enter into a contract directly with the Whites. The request is to provide the Whites with a measure of confidence that the system will be regularly maintained, thereby reducing the risk of a system failure and damage to her property and residence.

Sincerely,

Karen A. Willie

KAR:reh; P:\CLIENTS\White, Teresa\Correspondence\030409 Final Plat Approval Letter.doc
Enclosures

cc: Kathy Lambert, King County Council
Bob Ferguson, King County Council
Larry Gossett, King County Council
Pete von Reichbauer, King County Council
Larry Phillips, King County Council
Julia Patterson, King County Council
Jane Hague, King County Council
Dow Constantine, King County Council
Reagan Dunn, King County Council

Councilmembers

March 4, 2009

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Randy Sandin, Division Director, Land Use Services Division (LUSD), Department of Development and
Environmental Services (DDES)
Molly A. Johnson, PE, Development Engineer, Engineering Review Section (ERS), LUSD, DDES
Pete Dye, Engineer III, ERS, LUSD, DDES
Steve Townsend, Supervisor, Land Use Inspection Section, LUSD, DDES
Jeff Pray, Engineer III, Land Use Inspection Section, LUSD, DDES
Cass Newell, Deputy Prosecuting Attorney, King County Prosecuting Attorney's Office

EXHIBIT #1



Law Offices
Of
Karen A. Willie, PLLC

KAREN A. WILLIE

August 22, 2008

Peter Dye
King County DDES
900 Oakesdale Avenue Southwest
Renton, Washington 98057

Re: **Chatham Ridge Development, Kirkland, WA**
DDES File No. L07SR030
Ordinance 15716

Dear Mr. Dye,

Teresa Chilelli-White has retained my firm in connection with the above-referenced development being constructed by Burnstead Construction. She chose my law firm because we specialize in all aspects of "water law," including surface water issues. My work in this area has been for both municipalities and private citizens.

As you are aware, Ms. Chilelli-White's home is directly west and adjacent to the Chatham Ridge Development. Throughout the planning and permitting process for this development, Ms. Chilelli-White has repeatedly voiced her concerns about the drainage plan for the project. Her primary concern is that in the event that the stormwater detention vault fails, the drainage overflow plan indicates that the "stormwater would sheet flow to the west into the neighboring private property." While we understand that the intention to direct the stormwater for the Chatham Ridge Development to our client's home is the plan if the detention system fails, it is entirely unacceptable to burden the Chilelli-White property with the very real threat of future flooding.

Because the plan to direct floodwaters at her home is unsound, Ms. Chilelli-White appealed the Hearing Examiner's preliminary plat approval for the project to the King County Council. In the appeal, Ms. Chilelli-White explained her concerns that the plan calls for her

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Facsimile: 206-223-0168
Email: kwillie@willielaw.com*

property to be flooded if the vault system fails. Because of this drainage concern, condition 6a of the preliminary plat approval provides:

The facility design and provisions for overflow requirements listed in the 2005 KCSWDM shall be met and the concerns of the appellant shall be addressed during the engineering plan review. The KCSWDM manual offers a variety of options for this, which will be considered during the detailed Engineering Review phase. For this DDES has no objection's [sic] to the applicant's offer to include the appellants in discussion of design options at the final engineering review phase. We recommend that this coordination be made between the appellant and applicant. Specifically, the applicant shall meet the requirements in Section 1.2.3 Core Requirement # 3: Flow Control.

See Tab A.

In accordance with this provision, Ms. Chilelli-White hired Barry Constant, P.E., to evaluate the Chatham Ridge drainage plans and provide her with recommendations that would ensure her property is protected in the event of a system failure. In June of 2007, Ms. Chilelli-White sent a letter to Burnstead Construction outlining the recommendations of her engineer. *See Tab B.* Burnstead rebuked Mr. Constant's recommendations, claiming they were too early in the design process and that Ms. Chilelli-White's concerns could not be addressed until final engineering. Additionally, instead of coordinating with Ms. Chilelli-White per the condition of approval, Burnstead told her to communicate with King County in order to have her engineer review the second submittal of the drainage plans. *See Tab C.* On June 21, 2007, Ms. Chilelli-White sent you a letter containing the review letter from her engineer and again expressed her concerns about the drainage system for the project. *See Tab D.* On July 13, 2007, Ms. Chilelli-White contacted you regarding her concerns about the drainage issue and was told that Wylie Wong was the engineer assigned to review the project. When Ms. Chilelli-White spoke with Mr. Wong in October of 2007, he indicated the County would require Burnstead to address her concerns. In other words, both the County and Burnstead avoided addressing Ms. Chilelli-White's concerns by claiming it was the other party's problem.

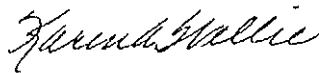
In 2008, Ms. Chilelli-White received the final drainage plans for the development from King County, which included the site development drawings and the drainage report for the development, and provided them to her engineer, Mr. Constant, P.E., for his review. Upon review, Mr. Constant noted that there are still unaddressed concerns with the overflow mechanisms in the detention vault, because the final plans continue to direct overflow storm water on a path outside of the natural drainage regime and directly toward the Chilelli-White home. *See Tab E.* These final plans clearly do not address the concerns of Ms. Chilelli-White that her home is directly in the path of secondary overflow for the project. Hence, Burnstead has not complied with condition 6a of the preliminary plat approval. In his review letter, Mr. Constant provides a straightforward and relatively inexpensive solution to Ms. Chilelli-White's concerns, which would bring the development into compliance with conditions 6a. Mr. Constant suggests installing a system consisting of rock berms and a shallow ditch line to direct overflows away from the Chilelli-White home.

On May 13, 2008, Ms. Chilelli-White sent a letter to DDES (and attached the review letter from Mr. Constant) reiterating her concerns about the drainage system and asking the County to enforce condition 6a of approval. *See Tab F.* Ms. Chilelli-White requested a response from the County as to whether DDES was going to require Burnstead to address her concerns per the approval condition. The County replied that: "The applicant's submittal shows two emergency overflows at the vault outlet but does not specifically address the item in your consultants letter regarding a ditch line or berm to intercept flows." *See Tab G.* It is our understanding that DDES has not required Burnstead Construction to modify its drainage plans to address Ms. Chilelli-White's concerns.

The failure of DDES to enforce condition 6a of approval is especially concerning given that there is a relatively inexpensive solution to protect the Chilelli-White home from potential flooding and the fact that the drainage system will be maintained by King County. *See Tab H.* Once the County assumes maintenance responsibilities for the system, the County also assumes liability for any and all damages arising out of the failure to maintain the system properly. *See, e.g., Colella v. King County, 72 Wn.2d 386, 391 (1967).*

In summary, by this letter Ms. Chilelli-White is asking the County to enforce condition 6a of the preliminary plat approval for the Chatham Ridge Development. Burnstead Construction has not coordinated with Ms. Chilelli-White and her engineer to address the concerns raised before the County Council. Instead, DDES has approved plans that do not comply with condition 6a because there is no provision to protect the Chilelli-White home should the drainage system fail. The County's failure to ensure that condition 6a of approval is met is inconsistent with Core Requirement #1, which requires that all surface and storm water runoff from a project must be discharged at the natural location so as not to be diverted onto or away from downstream properties and that diverted flow not be allowed to discharge in a manner that significantly impacts downhill properties. We would appreciate a written response from the County as to whether Burnstead Construction will be required to comply with condition 6a of the preliminary plat approval.

Sincerely,



Karen A. Willie

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Enclosures

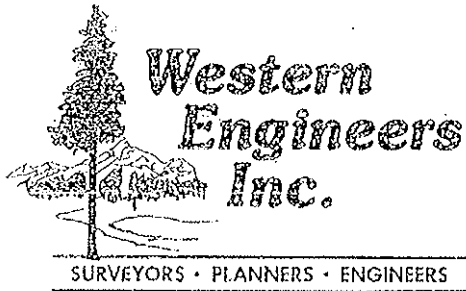
cc: King County Councilmembers: Larry Phillips, Larry Gosset, and Jane Hogue
Jim Sanders, Managing Engineer Supervisor
Tiffany Brown, Burnstead Construction
Ross Baker
Teresa Chilelli-White (w/o enclosures)

NOTE: UNLESS SPECIFICALLY NOTED, ANY WATERMAIN OR FIRE HYDRANT DETAILS ON BUILDING PLANS/DRAWINGS HAVE NOT BEEN REVIEWED OR APPROVED.

- c. Final plat approval requires an inspection and approval of the fire hydrant and water main installation by a King County Fire Inspector, prior to recording. Call [888]546-7728 to schedule an inspection; after a permit to install has been obtained from DDES; Fire Protection Engineering.
6. Final plat approval shall require full compliance with drainage provisions set forth in King County Code 9.04. Compliance may result in reducing the number and/or location of lots as shown on the preliminary approved plat. The following conditions represent portions of the Code. Requirements shall apply to all plats.
 - a. Drainage plans and analysis shall comply with the 2005 King County Surface Water Design Manual and applicable updates adopted by King County. DDES approval of the drainage and roadway plans is required prior to any construction.

The facility design and provisions for overflow requirements listed in the 2005 KCSWDM shall be met and the concerns of the appellant shall be addressed during the engineering plan review. The KCSWDM manual offers a variety of options for this, which will be considered during the detailed Engineering Review phase. For this DDES has no objection's to the applicant's offer to include the appellants in discussion of design options at the final engineering review phase. We recommend that this coordination be made between the appellant and the applicant. Specifically, the Applicant shall meet the requirements in Section 1.2.3 Core Requirement #3: Flow Control.
 - b. Current standard plan notes and ESC notes, as established by DDES Engineering Review, shall be shown on the engineering plans.
 - c. The following note shall be shown on the final recorded plat:

"All building downspouts, footing drains, and drains from all impervious surfaces such as patios and driveways shall be connected to the permanent storm drain outlet as shown on the approved construction drawings # _____ on file with DDES and/or the King County Department of Transportation. This plan shall be submitted with the application for any building permit. All connections of the drains must be constructed and approved prior to the final building inspection approval. For those lots that are designated for individual lot infiltration systems, the systems shall be constructed at the time of the building permit and shall comply with plans on file."
 - d. The engineering plans shall include significant trees and comply with KCC 16.82.156 for clearing of the site.
 - e. Applicant shall install construction fencing.



13000 Highway 99 South • Everett, Washington 98204
(425) 356-2700 FAX (425) 356-2708

June 15, 2007

King County
Department of Development and Environmental Services
900 Oakesdale Avenue SW
Renton, WA 98057-5212

Subject: Chatham Ridge Development, Kirkland, Washington

To Whom it May Concern:

Western Engineers, Inc. was requested, by the adjacent downstream homeowner to the above project, to review the storm water drainage plans and Technical Information Report for compliance to the King County Surface Water Design Manual and the general public safety. We reviewed the drawings and TIR and have serious concerns regarding possible downstream flooding to the homeowner. Mrs. Teresa Chillelli-White is the homeowner and client who have requested this review from Western Engineers.

The site development as depicted on the drawings is a steeply sloped parcel. The overall slope is 12.8 percent from the northeast to the southwest corner. The 65-feet of vertical fall is across a little more than 500-feet. The underground detention vault is located near the low point of the site (naturally) and the overflow outlet is directly upstream of Mrs. Chillelli-Whites residence.

As designed, the detention vault outlet is near the southwest corner of the site, which will release storm water runoff below the level of the homes foundation and garage, posing no flooding issues to the residence. This release point is not in question for this discussion it's the secondary overflow is the main issue. Catch Basin No. 12 is located at the southwest end of Road 'A' and is the grate elevation is the lowest point of the conveyance system, thereby creating a secondary overflow mechanism. If and when the control riser and riser overflow becomes plugged, the storm water will hydraulically backflow to CB #12 and disperse runoff down the slope.

All storm water runoff is collected and routed into the vault by the entire conveyance system for this site. With this fact foremost and when everything fails (usually during the worst part of any storm), the back flow runoff could flow at the 100-year storm runoff rate of 0.775 cfs. In other words, at almost 350 gallons per minute!

E: / 2005 / 05611 / Drainage Overflow 06-15-2007.doc

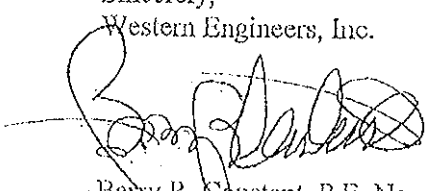
We believe the drawings are lacking proper safety controls where this fact is concerned. Using a number of basic engineering methods, the overflowing CB could be revised prior to construction approval to protect our client's property and residence.

One method may be the following: Add another 15-inch diameter pipe to CB # 12, to direct any possible overflows down slope towards CB # 1 (this will require raising the road about 0.5-feet near the end) and bypassing CB # 4. Catch Basin No. 1 could be changed to a short Type 2-48-inch diameter manhole with a solid or grated lid. The large manhole will accommodate the two downstream pipes without weakening the structure. All overflowing runoff would then bypass all of the residence and property (avoiding any erosion concerns too).

Another method would be to re-grade the eastern portion of the Chilelli property (by a construction easement), to create a berm of compacted structural fill, to direct any overflows south, down the property line, around their residence. An armored slope near the CB # 12 outlet is also required.

The TIR mentions the secondary overflow system as adequate, but the lack of engineering finesse is remarkable considering the thought and care that was used in preparing the design and report. Our client recently had her home severely damaged by a falling tree during a storm last winter. Western Engineers and The Chilelli's are very concerned about this issue and would like to request that the reviewers look closely at our request.

Sincerely,
Western Engineers, Inc.



Barry R. Constant, P.E. No. 38764
Corporate Engineer

THE BURNSTEADS

June 28, 2007

Bruce White
Teresa Chilelli-White
17819 44th Ave West
Lynnwood, WA 98037

Subject: File No. L07SR030

Dear Mr White and Mrs. Chilelli-White,

We have received your letter of concerns dated June 21, 2007 for Chatham Ridge. Burnstead Construction is required to label Tracts as instructed by the County. Your concern regarding the labeling of Tract "B" will need to be addressed by the county.

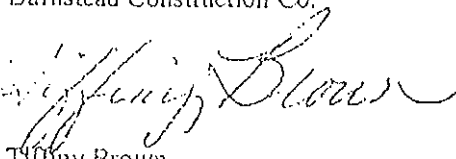
Burnstead Construction is upholding their willingness to address your overflow concerns per paragraph 6.a of the Hearing Examiner Decision. It is your responsibility to obtain the documents necessary and provide feedback. We received your engineering comments the same day we received your letter stating our lack of cooperation. It is impossible to address your concerns on the same day.

Furthermore, you state you received the final drainage report and plans, this is incorrect. What you received is our initial submittal package for final engineering. Pete Dye from KC DDES made comments on our first round of submittals and the vault design has changed significantly based on county requirements and we will need to resubmit. You will need to remain in contact with the county to obtain our second submittal and again have your engineer review these.

Once Burnstead has an approved design, we can begin to look at your concerns. To provide a commitment to you now on a constantly changing design is impossible.

Any solution provided will need to meet King County code. If your engineer has questions as to how the process works at the county, please have him call me directly.

Respectfully,
Burnstead Construction Co.



Tiffany Brown
Land Acquisition Manager

Cc: Pete Dye, King County
Geoff Tumble, Burnstead Construction
Barry Constant, Western Engineers Inc.

Peter Dye
King County
Department of Development and Environmental Services
900 Oakesdale Avenue SW
Renton, WA 98057

May 13, 2008

Subject: File No. LO7SR030 Chatam Ridge Development, Kirkland, WA

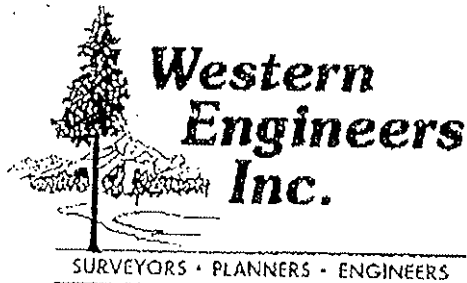
Dear Mr. Dye:

Recommendation 6.a of King County Ordinance 20006-0456.3 states: "the concerns of the appellant shall be addressed during the engineering plan review". Burnstead Construction and Blueline engineering were well aware of our concerns regarding the secondary overflow should the system fail. None of the plans submitted have ever addressed our concerns.

We have attached a 2nd letter from our engineer stating these concerns along with possible remedies. Should they have a different remedy they wish to implement, we will not oppose it as long as it ensures our property will not be damaged should the system fail. Please ensure that a system will be installed that will direct secondary overflow, in the case of a system failure, away from our home and to the outlet at the southwest corner of the proposed development as it would under normal circumstances.

It has been argued that it is almost impossible for this system to fail, yet many failure proof systems failed the past two December's in big storms. It is a small price to pay now to save perhaps thousands or tens of thousands in the future. Should the system fail and our property be flooded because the water is flowing directly west instead of southwest, as is the normal flow, will hold both Burnstead Construction and King County responsible for the any damages.

Furthermore the required construction fencing is not shown on the plans. While there is a symbol in the legend for it, that symbol does not appear on the drawings.



13000 Highway 99 South • Everett, Washington 98204
(425) 356-2700

FAX (425) 356-2708

May 8, 2008

Mrs. Teresa Chilelli-White
C/O A.C Builders
17819 - 44th Avenue West
Lynnwood, WA 98037

Subject: Chatham Ridge Development Drainage

Dear Teresa:

As requested, Western Engineers, Inc. has reviewed the drainage plans you provided us concerning the Chatham Ridge development located adjacent to your residence in Kirkland, WA. Mr. Peter Dye, representing King County, has requested through Mrs. Chilelli, that Western Engineers review the revised drawings.

After reviewing the revised site development drawings and drainage report from Blueline Land Development Consulting we have concerns relating to the primary and secondary overflow mechanisms in the detention vault. To review, the site historical drainage flowpath is from the northeast to the southwest. The proposed detention vault is located at the southwest corner of the site and all drainage flows to that point. We concur that this is the best and most logical location for the detention area.

Some design revisions have been included in the most recent plan set (signed and dated 3/31/2008). These include a second overflow riser inside the vault itself. The primary control riser also has an overflow orifice in the riser and both overflows are the same (319.16-feet). No other apparent changes have been made to the vault system or externally to the site itself. The drainage report, on page 4-10, mentions the secondary overflow as a catch basin rim (elevation 321.01-feet) that will "sheet flow to the west into the neighboring private property"...the key point here is the 'private' part of the neighboring property.

In the case of a total failure of the primary control structure risers release mechanisms, the secondary overflow is on a path from catch basins number 12 and 13, directly towards the neighboring property, and the Chilelli's family home. The actual vault rim elevations (321.70-feet) are higher than the catch basins rim elevations; therefore, storm water will not hydraulically be able to release from the vault rims.

The Chilelli's have recently had major problems with storm water entering their new home...in the form of a tree falling on it last year and the resulting destruction of a portion of the home. The family has been displaced for some time while the house has

B: / 2005 / 05611A / Drainage Overflow 5-8-2008.doc

been re-built. They recently moved back into their home and they are decidedly nervous and frightened of any future storm water runoff issues as a result of the adjacent developments design. They do not want any accidental runoff from entering their recently restored home from a malfunctioning and overflowing vault.

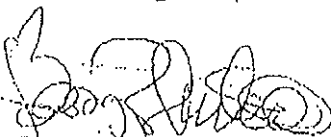
It appears that the Blueline Land Development Consulting have little regard for the neighbor's issues. They have not provided any offsite protection even after we have requested some design revisions in a previous comment letter to the County (dated 6-15-2007).

One possible solution to the overflow issue is an area directly to the west of the vault, a 15-foot building setback area. This area could possibly be used as a shallow ditch line to direct any overflows from the catch basins, at the end of the roadway, and channel any flows away from the adjacent property. A simple rock berm to the west of CB No. 12 & 13 would direct overflows into this ditch line. Point of fact, with the steep road slope proposed of 12 percent in the cul-de-sac area, storm water runoff may in-fact bypass the catch basins and flow directly offsite to the west. This berm would help direct road runoff back into the catch basins.

If additional width is required by the vault, then the vault could be re-located 5 to 10-feet to the east, and on Lot numbers 14 and 15 the boundary lines can be adjusted. Move Lot 15's western boundary to the east 10-feet and Lot 14's western boundary line to the west 10-feet. The boundary line between the lots should then be adjusted to correct the areas to the required square footage. This is all speculation as to allow additional room to the west of the vault for an emergency flowpath.

Ultimately, many more solutions can be imagined and designed. As an engineer I have to make revisions based on new conditions and have to be flexible in dealing with jurisdictions and clients. Please consider our suggestions to this design. Contact Western Engineer if you have any questions regarding this letter or it's analysis of the Blueline Land Development Consulting construction plans or report.

Sincerely,
Western Engineers, Inc.



Barry R. Constant, P.E.
Project Manager

Peter Dye
King County
Department of Development and Environmental Services
900 Oakesdale Avenue SW
Renton, WA 98057

Subject: File No. LO7SR030 Chatam Ridge Development, Kirkland, WA

Dear Mr. Dye:

I have spoken to you on the phone about the Chatam Ridge development. My husband & I are the property owners directly west of the project. Several concerns were raised during the preliminary plat process that have not been resolved: the label of tract "B" and the secondary overflow drainage issue.

Preliminary Plat conditions of approval state that tract "B" shall be designated as a utility tract and access tract to accommodate our access easement. The Pedestrian portion of the tract cannot currently be utilized until it connects to a public right of way. This may never happen; therefore the tract should clearly be labeled "access and utility tract, possible future pedestrian access", and our easement should be clearly shown on the plans. Please refer to recommendation 8.c of the King County Ordinance 20006-0456.3. The current label is clearly misleading to future homeowners of the development that this tract may be used as a public pedestrian right of way. We have an access easement that may one day contain a private driveway; therefore it could not be open to pedestrian access. Please ensure that this tract is labeled properly.

Recommendation 6.a of King County Ordinance 20006-0456.3 states: "the concerns of the appellant shall be addressed during the engineering plan review". Burnstead Construction and Blueline engineering were well aware of our concerns regarding the secondary overflow. The final engineering that was submitted did not address these concerns.

We have attached a letter from our engineer stating these concerns along with possible remedies. Should they have a different remedy they wish to implement, we will not oppose it as long as it ensures our property will not be damaged should the system fail. Please ensure that a system will be installed that will direct secondary overflow, in the case of a system failure, away from our home and to the outlet at the southwest corner of the proposed development as it would under normal circumstances.

It has been argued that it is almost impossible for this system to fail, yet many failure proof systems failed in last Decembers big storms. It is a small price to pay now to save perhaps thousands or tens of thousands in the future.

We hope these issues will be resolved. Should you have questions, please contact us at the numbers listed below. Thank you for your time.

Sincerely,

Bruce White
Chau White 6/21/07

CC: Tiffany Brown, Burnstead Construction
Mary Jane Slye, Burnstead Construction
Greg Tumble, The Blue Line group

Subj: Re: Chatam ridge;
Date: 6/18/2008 3:03:17 PM Pacific Daylight Time
From: TChilelli
To: Pete.Dye@kingcounty.gov

The issue has always been overflow should the system fail, this issue has never been addressed. Will KC be requiring them to direct any water in that situation to the SW which is the current course of flow now? Currently the system failure overflow goes directly west toward my garage and house.

The December storms of 2006 and 2007 have proven that even newer systems have failed. Should this issue not be addressed, I will have no choice but to contact the County Council and put them on notice that should the current proposed system go in with no way to accommodate flow during system failure, then King County shall be directly responsible for any and all damages caused by this oversight since the flow will be directed west instead of southwest which is the current flow.

Burnstead construction has known this issue since the appeal. I worked them and Ms. Dekhordl in good faith as they both assured me this issue would be handled, but they did not want to be restricted in their options as how to handle it. We offered several suggestion to both Burnstead and the County, but it seems that we are not getting the issue addressed or resolved. We are not talking about secondary overflow. This issue is system failure. Please inform me as to how King County intends to proceed?

Thank you,

In a message dated 6/18/2008 2:45:12 PM Pacific Daylight Time, Pete.Dye@kingcounty.gov writes:

The final engineering plans have been submitted to our office for approval. The applicants submittal shows two emergency overflows at the vault outlet but does not specifically address the item in your consultants letter regarding a ditch line or berm to intercept flows.

From: TChilelli@aol.com [mailto:TChilelli@aol.com]
Sent: Monday, June 16, 2008 9:39 AM
To: Dye, Pete
Subject: Chatam ridge;

Hello Peter;

Just checking in to see if anything has been done to correct the problem that was outlined in my letter?

Please let me know.

Thank you,

Teresa Chilelli-White

Wednesday, June 18, 2008 America Online: TChilelli

Section 10 Operations and Maintenance

The detention facility will be publicly maintained.

EXHIBIT 2



King County

Department of Development
and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212
206-296-6600 TTY 206-296-7217
www.metrokc.gov

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OCT 15 2008

LAW OFFICE OF
KAREN A. WILLIE

October 10, 2008

Karen A. Willie
Law Offices of Karen A. Willie, PLLC
11 West McGraw Street
Seattle, WA 98119

RE: Chatham Ridge Development - File No. L07SR030

Dear Ms. Willie:

I am writing as a follow up to my September 11, 2008 letter to you in response to your letter of August 22, 2008, on behalf of your client Ms. Chilelli-White regarding the Chatham Ridge Development in Kirkland, WA. Your letter was addressed to Mr. Peter Dye at the Department of Development and Environmental Services (DDES) and the letter outlined your concerns regarding compliance with preliminary plat Condition 6a and the design requirements for the project storm water facility. In my letter of September 11, 2008 I explained we had contacted Burnstead Construction to obtain their response to your letter.

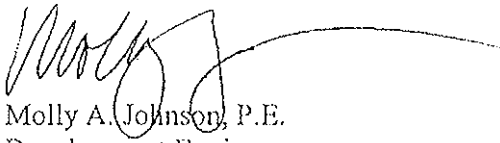
Based upon our review of the King County Hearing Examiner's report for the Chatham Ridge subdivision, our office has determined the project does comply with applicable design requirements for the control of storm water. Condition 6a in the Hearing Examiner's report identifies the need for compliance with overflow requirements listed in the 2005 King County Surface Water Design Manual (KCSWDM). The engineering plans approved by our office include a double overflow system for the storm water vault which complies with county standards.

During design of the drainage plan, a second overflow structure was added to the detention vault, providing a redundant overflow system if the first structure did not function properly. The second overflow was added to the design as a direct response to Ms. Chilelli-White's concerns and Condition 6a. This design exceeds the drainage manual overflow criteria and adequately addresses Condition 6a. Core Requirement 1, Discharge at the Natural Location, is also met because the storm water vault is designed to outlet at the southwest corner of the site which is the natural discharge location.

In response to your letter, Tiffany Brown of Burnstead Construction, has also responded by e-mail on September 19, 2008 to Bruce Whittaker (see attached e-mail). The response generally states that by adding a second overflow structure to the detention vault, Hearing Examiner Condition 6a is met and the design exceeds the requirements of the King County Surface Water Design Manual (KCSWDM). The e-mail response also offers that Burnstead Construction would construct an additional overflow swale along the east line of the Chilelli-White property, at Ms Chilelli-White's expense, and pending the granting of a temporary construction easement.

If you have further questions regarding my response to your letter, please contact me by telephone at 206-296-7178 or via e-mail at molly.johnson@kingcounty.gov.

Sincerely,



Molly A. Johnson, P.E.
Development Engineer
Land Use Services Division

Attachment

cc: The Honorable Larry Phillips, Councilmember, King County
The Honorable Larry Gossett, Councilmember, King County
The Honorable Jane Hague, Councilmember, King County
Tiffany Brown, Burnstead Construction
Peter Dye, Engineer III, Engineering Review Section, Land Use Services Division
(LUSD), DDES.
Bruce Whittaker, Engineer III, Engineering Review Section, LUSD, DDES
Steve Townsend, Supervisor, Land Use Inspection Section, LUSD, DDES
Jeff Pray, Engineer III, Land Use Inspection Section, LUSD, DDES
Cass Newell, Deputy Prosecuting Attorney, King County Prosecuting Attorney Office

From: Tiffany Brown [Tiffany@burnstead.com]
Sent: Friday, September 19, 2008 11:37 AM
To: Whittaker, Bruce
Subject: FW: Chatham Ridge

Hi Bruce,
I got your vm. Here's what I'm thinking.

I did talk to my engineer and we are convinced that we have gone above and beyond with providing the secondary overflow to "address the concerns of the appellant" per the Hearing Examiner's report 6a.

Because providing this overflow is not required by the KC Surface Water Design Manual proves this is an exclusive result of showing our cooperation in meeting the appellants concerns with this option.

If they are requesting this ditch as assurances against flooding, they will need to grant a temporary construction easement and this ditch can be installed along their east property line. We offer to have our contractor do it, but it would be at their expense since it is not required. This ditch would accomplish the same goal if that is what they are truly worried about.

Call me to discuss.

Tiffany Brown
Burnstead Construction Co.
Director of Land Acquisition and Entitlement
425.454.1900 ext 234

EXHIBIT 3



Law Offices
Of
Karen A. Willie, PLLC

KAREN A. WILLIE

December 30, 2008

Molly A. Johnson, P.E.
Development Engineer
Land Use Services Engineer
900 Oakesdale Avenue Southwest
Renton, Washington 98057

Re: **Chatham Ridge Development, Kirkland, WA**
DDES File No. L07SR030
Ordinance 15716

Dear Ms. Johnson:

Thank you for your letter of October 10, 2008 responding to the concerns of our client, Teresa Chilelli-White, regarding the drainage plan at Chatham Ridge Development. By this letter, Ms. Chilelli-White would like the County to know that she does not believe the drainage plans submitted by Burnstead adequately address her concerns as required by condition 6a of the preliminary plat approval for the Chatham Ridge Development. While Ms. Chilelli-White understands it is the County's position that the plans comply with the County's surface water requirements, she remains concerned about the safety of her residence should the drainage system fail. Our client would like to reiterate that in the event of a system failure, the surface water would not flow in its natural path in violation of Core Requirement # 1 of the Surface Water Design Manual. Additionally, Ms. Chilelli-White contacted Tiffany Brown regarding Burnstead's offer to construct an overflow swale and asked for an estimate. Ms. Brown indicated that she was waiting to hear back from the County and then never got back to Ms. Chilelli-White. At this point, since grading and paving have occurred the time for a negotiated agreement has passed.

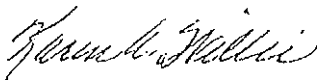
In closing, Ms. Chilelli-White would like to emphasize that the failure of the County to enforce condition 6a of the approval is especially concerning given that the County is set to assume maintenance responsibilities for the drainage system. Once the County assumes

11 West McGraw Street
Seattle, WA 98119
Phone: 206-223-1060
Facsimile: 206-223-0168
Email: kwillie@willielaw.com

Molly Johnson
December 30, 2008
Page - 2

maintenance responsibilities for the system, the County also assumes liability for all damages arising out of the failure to maintain the system properly.¹ In order to ensure regular maintenance of the system, Ms. Chilelli-White requests that the County enter into a monthly or semi-monthly contract with a maintenance company or cause Burnstead to enter into such an agreement. This will make certain that the vault would be cleaned and inspected on a regular basis in order to ensure the safety of her residence.

Sincerely,



Karen A. Willie

KAR:reh: P:\CLIENTS\White, Teresa\Correspondence\123008 King County Letter.doc

cc: Ron Sims, King County Executive
King County Councilmembers: Larry Phillips, Larry Gosset, and Jane Hague
Jim Sanders, Managing Engineer Supervisor
Tiffany Brown, Burnstead Construction
Ross Baker
Pete Dyc, Engineer III, Engineering Review Section, Land Use Services Division (LUSD), DDES
Bruce Whitaker, Engineer III, Engineering Review Section, LUSD, DDES
Steve Townsend, Supervisor, Land Use Inspection Section, LUSD, DDES
Jeff Pray, Engineer III, Land Use Inspection Section, LUSD, DDES
Teresa Chilelli-White

¹ See e.g., *Colella v. King County*, 72 Wn.2d 386, 391 (1967).

EXHIBIT 4



King County

**Department of Development
and Environmental Services**

900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

www.kingcounty.gov

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FEB 17 2009

LAW OFFICE OF
KAREN A. WILLIE

February 11, 2009

Karen A. Willie, PLLC
Law Offices of Karen A. Willie, PLLC
11 West McGraw Street
Seattle, WA 98119

RE: Chatham Ridge Development, Kirkland, WA
DDES File No. L07SR030
Ordinance 15716

Dear Ms. Willie:

Thank you for your letter of December 30, 2008 discussing the concerns of Ms. Teresa Chilelli-White. We are providing you with the written response noted in our January 16, 2009 letter to your office.

In response to Ms. Chilelli-White's concern regarding the King County's compliance with Condition 6a of the preliminary plat approval, it is the opinion of this office that the Department of Development and Environmental Services (DDES) has fully complied with Condition 6a and with the King County Surface Water Design Manual (KCSWDM).

Condition 6a required that Ms. Chilelli-White's concerns be addressed during the engineering plan review. Our Engineering Review Section consistently worked with the project developer and Ms. Chilelli-White to address her concerns. The developer actually over designed the drainage system, adding a double overflow system, in order to provide protection for Ms. Chilelli-White above and beyond what is required by the KCSWDM.

Based on your letter, it appears that Ms. Chilelli-White still has some unease regarding the potential for flooding on her property. Since the developer has met or exceeded the requirements set forth by the KCSWDM and Condition 6a, Ms. Chilelli-White has the option of adding additional protections to satisfy her own concerns at her own expense. It is not King County's place or duty to provide any special protections or assurances to Ms. Chilelli-White. For this reason, the County will not enter into a contract with Ms. Chilelli-White for drainage system maintenance as your letter requests. The County will maintain the drainage system as it would any other drainage system for which it assumes maintenance responsibilities.

Karen A. Willie, PLLC
Law Offices of Karen A. Willie, PLLC
February 11, 2009
Page 2

If you have any questions, please contact Molly Johnson, Development Engineer, at 206-296-7178 or via e-mail at molly.johnson@kingcounty.gov.

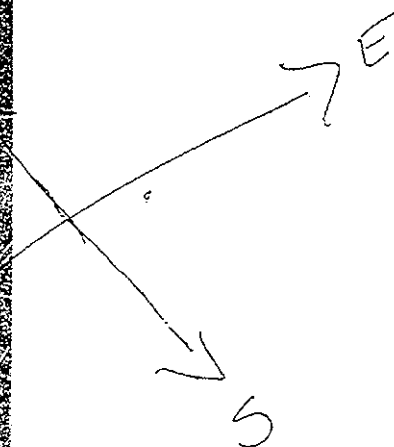
Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Warden', with a stylized 'W' at the end.

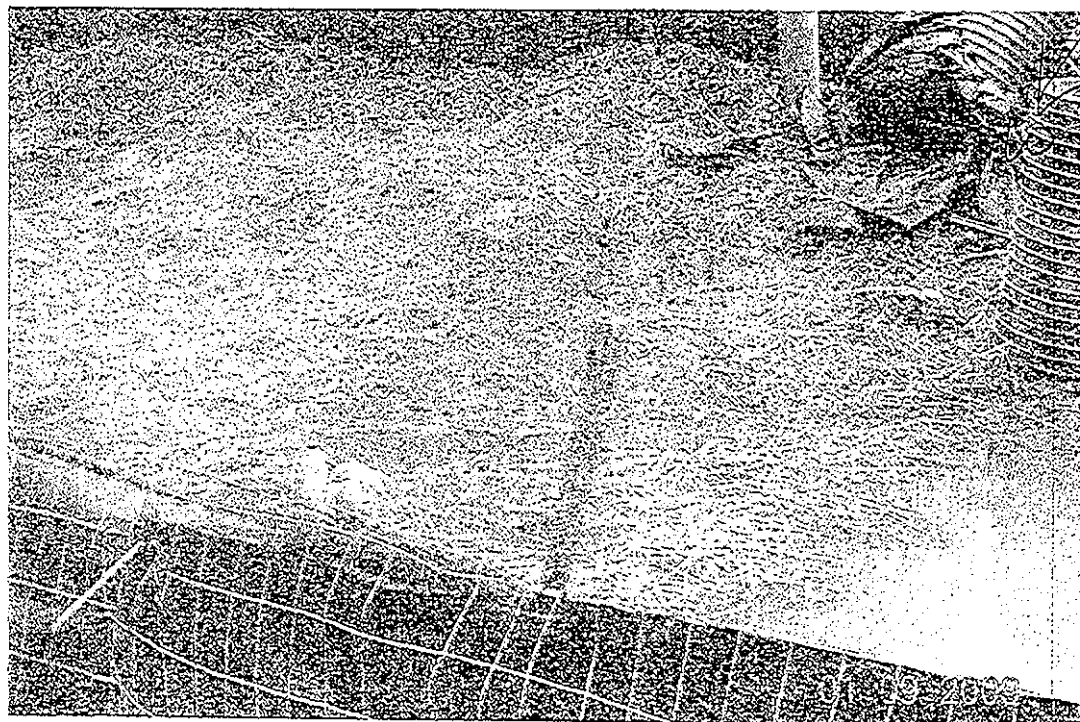
Stephanie Warden
Director

cc: The Honorable Larry Phillips, King County Council
The Honorable Larry Gossett, King County Council
The Honorable Jane Hague, King County Council
The Honorable Ron Sims, King County Executive
Randy Sandin, Division Director, Land Use Services Division (LUSD), Department
of Development and Environmental Services (DDES)
Molly A. Johnson, PE, Development Engineer, Engineering Review Section (ERS),
LUSD, DDES
Pete Dye, Engineer III, ERS, LUSD, DDES
Steve Townsend, PE, Supervisor, Land Use Inspection Section (LUIS), LUSD, DDES
Jeff Pray, Engineer III, LUIS, LUSD, DDES
Tiffany Brown, Land Acquisition Manager, Burnstead Construction

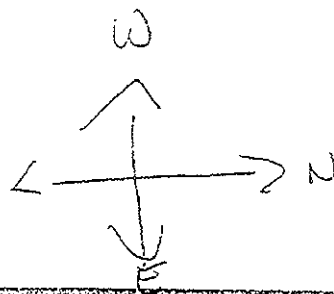
EXHIBIT 5



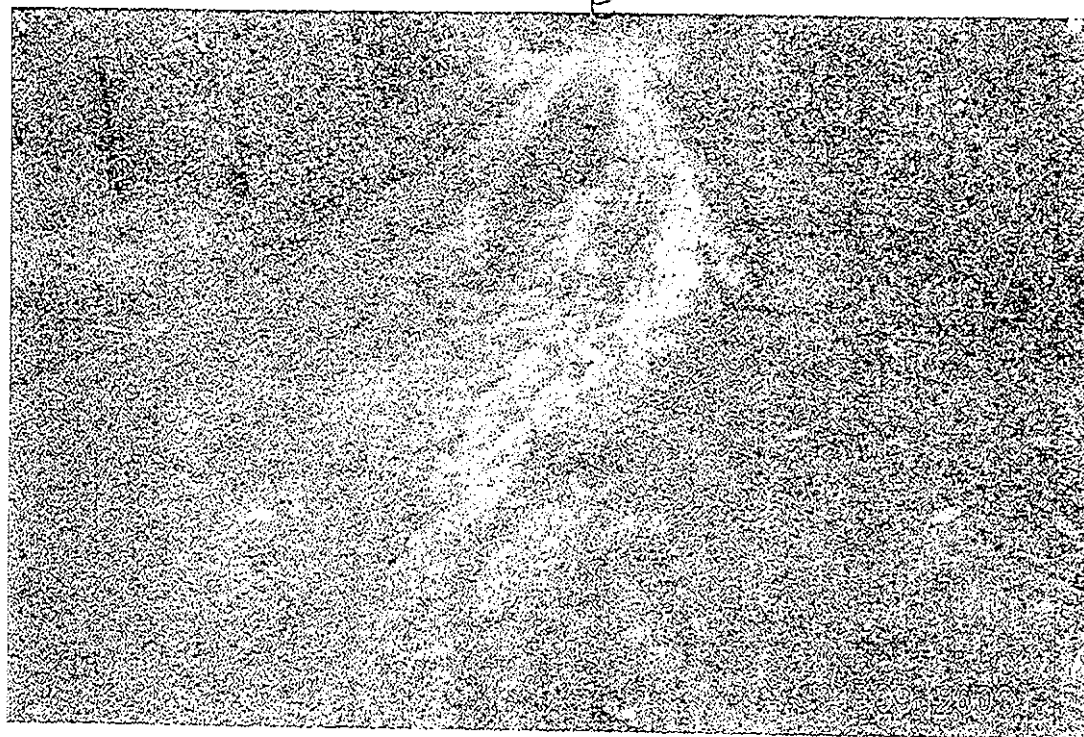
Vault Failure @
Sw corner of vault.



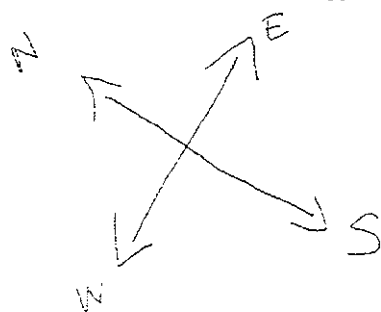
Vault
Failure at SW
Corner of Vault
Causing water
to Sheet Flow West
over Gravel Road
on our South
Property Border



water flowing Directly west
on our ROAD & Not into



Drainage Swale
on North Side
of ROAD



Silt & gravel
that settled on
our property after
flowing directly west
from the end of the new
Road.

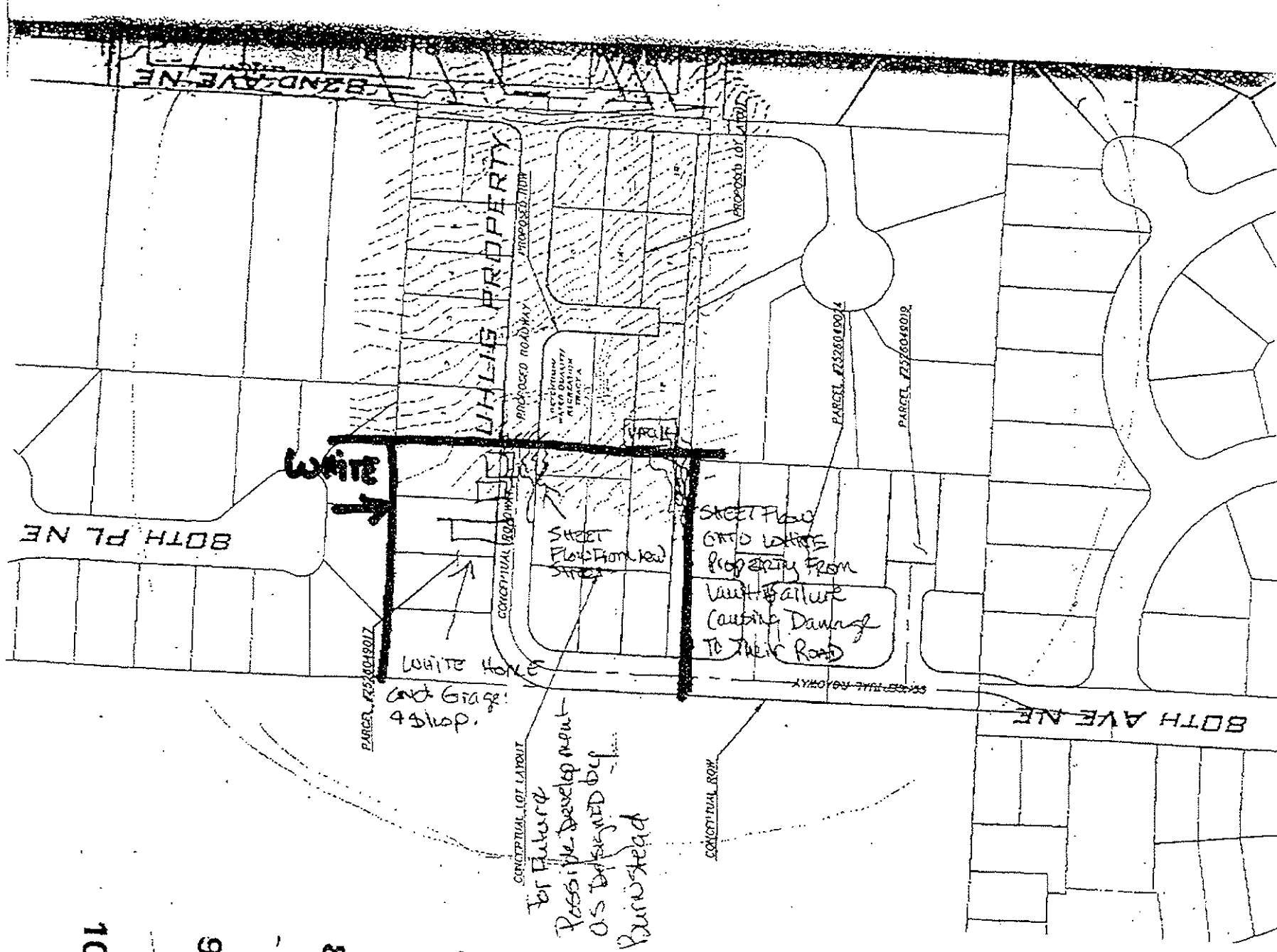
EXHIBIT 6

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King County

**Department of Development
and Environmental Services**

900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

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MAR 31 2009

LAW OFFICE OF
KAREN A. WILLIE

March 30, 2009

Kelly A. Ryan
Law Offices of Karen A. Willie, PLLC
11 West McGraw Street
Seattle, WA 98119

RE: Final Plat Approval Chatham Ridge Development
DDES File No. L08FR036

Dear Kelly A. Ryan:

Thank you for your letter of March 5, 2009, to King County Councilmembers and Ray Florent, Chief Land Surveyor in the Department of Development and Environmental Services (DDES), discussing your client's concerns regarding the drainage system within the Chatham Ridge development. We understand that this is your final letter expressing the position of your clients regarding compliance with condition 6a of the preliminary plat conditions of approval.

In your letter, you state that the drainage facility within this development recently experienced a failure. The system was under construction at the time the pictures that you sent were taken. It has since been reviewed by the project's engineer and repaired. Since the approved drainage facilities have not been completed and accepted in the field, it is premature at this point to consider this incident to be an indication of failure in the final engineering design.

The final plat for the Chatham Ridge development has not yet been approved. When final approval is granted, Ms. Cheilelli-White has the option of appealing the decision to Superior Court if she believes the final plat does not meet the conditions of the preliminary plat approval, including condition 6a. The County believes, however, that there would be no basis for such an appeal because it has ensured thorough compliance with the preliminary plat conditions in this matter.

Kelly A. Ryan
Law Offices of Karen A. Willie, PLLC
March 30, 2009
Page 2 of 2

If you have any questions regarding the recording of the final plat, please contact Mr. Florent at 206-296-6790 or by e-mail at ray.florent@kingcounty.gov.

Sincerely,

A handwritten signature in black ink, appearing to read 'Stephanie Warden', with a long horizontal flourish extending to the right.

Stephanie Warden
Director

cc: King County Councilmembers
Raymond E. Florent, PLS, Chief Land Surveyor/ Engineer IV, Engineering
Review Section, Land Use Services Division (LUSD) DDES

July 21, 2009

DRAFT

Bruce White and Teresa Chilelli-White
11724 – 80th Avenue NE
Kirkland, WA 98034

Re: Response to your Letter dated May 7, 2009

Dear Mr. White and Ms. Chilelli-White:

Thank you for your letter dated May 7, 2009 in which you express concern over a storm drainage system approved by King County for a development (known as Chatham Ridge) that is adjacent to your home.

As you know, your home is located within Kirkland's Potential Annexation Area (PAA). The City Council has initiated the process of placing an annexation measure before the voters of the PAA, but it is still early in the process. Residents of the PAA may have the opportunity to vote on annexation on November 3, 2009. If annexation is approved, it is anticipated that the effective date will be some time in 2011. At that point, the City will assume maintenance responsibility for storm drainage systems previously maintained by King County in the PAA. Until that time, King County will continue to have responsibility for maintaining the system as well as responding to your concerns about the adequacy of the system.

Your correspondence (including attachments) was forwarded to Jenny Gaus, Kirkland's Surface Water Engineering Supervisor in the City's Public Works Department for future reference should the annexation proceed. If you would like to speak with Ms. Gaus, she can be reached at (425) 587-3850 or jgaus@ci.kirkland.wa.us. Thank you again for bringing your concerns to the City's attention.

Sincerely,
Kirkland City Council

By: James L. Lauinger, Mayor

Cc: Marie Stake, Communications Program Manager
Jenny Gaus, Surface Water Engineering Supervisor
Oskar Rey, Assistant City Attorney